IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.1015 OF 1988

The State of Maharashtra .... Appellant
Vs.
Sou. Subhadrabai Raghunath
Shinde, age about 42 years,
r/o Ragunath Nagar,
Prajapati Chawl, Wagle
Estate, Thane. .... Respondent

Shri B.H. Mehta, Addl. Public Prosecutor,
for the Appellant.

None present for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: MARCH 04, 2005

ORAL JUDGMENT (Per P.V.Kakade, J.):

1. The appellant-State has come in appeal against the judgment and order passed by the IV Addl. Sessions Judge, Thane on 12-8-1988, acquitting the respondent/accused who was prosecuted for commission of the offence punishable under Section 20(b)(i) and (ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as "the NDPS Act").

2. The facts in brief giving rise to this case are thus:-

On 25-3-1986, in the evening, the complainant

PHC Suryavanshi along with others was on patrolling duty at Raghunath Nagar within the jurisdiction of the Wagle Estate Police Station, Thane and at that time they received a secret information that one lady is running business of charas and ganja in her pan shop on the rear side of Panama company. The police party called for two panch witnesses and disclosed the information to them. Thereafter the raiding party along with the panchas raided the pan shop where the accused was found sitting in the pan shop. After observing usual precautions, the police party took search of the pan shop of the accused in the presence of the panch witnesses and found aluminium boxes containing charas pills - one containing 24 charas pills and another containing 10 charas pills. At the same time, they also found one tin box containing 7 packets of ganja weighing about 1 tola each. There was one more tin box containing 72 packets of bhang, weighing about 1 tola each. A sample of charas, ganja and bhang was taken in three empty match boxes which were sealed with slips of signatures of the panchas. PHC Jadhav attached the property under panchnama. The property of the accused were then taken to the Wagle Estate Police Station where HC Suryavanshi filed his complaint.

PSI Pawar, in-charge of the police station, on receiving the information registered the crime and

carried out the investigation. The property produced along with the complaint was sealed by the police station. During the course of the investigation, the sample was sent to the chemical analyser, Bombay along with the carrier PC Kasbe with a forwarding letter. On receipt of the C.A. report, PSI Pawar submitted the charge-sheet in the Court.

3. The learned trial Judge framed the charge against the accused person for commission of the offence under Section 29(b)(i) and (ii) of the NDPS Act to which the accused pleaded not guilty. The defence of the accused was that of total denial of any criminal liability. The prosecution led its evidence consisting of four witnesses, including the I.O. and the constable from the raiding party as well as the panch witnesses. On the basis of the available evidence on the record, the learned trial Judge came to the conclusion that even though possession of the contraband article was seen to have been established by the prosecution, however, it was not established that the contraband article which was sent to the C.A. for chemical analysis was the same which was seized from the accused person and on such ground benefit of doubt was given to the accused and consequently the accused was acquitted from the said case. Hence the present appeal.

4. We have heard the learned A.P.P. with whose help we have perused the entire evidence on record. None appears for the respondent.

At the outset, it may be noted that the entire evidence on record is sufficient to show that the raid was conducted by the police taking usual precaution and the accused was found in her pan shop and the search of the pan shop revealed the contraband articles in the said shop which was seized by the police under panchnama and at the time of making panchnama the samples of the contraband articles were taken in three empty match boxes and those were said to be sealed and labelled with signatures of the panchas. It is the case of the prosecution that those articles were subsequently deposited in the muddemal room of the police station and in due course were sent for chemical analysis to the C.A., Bombay with Constable Kasbe. The C.A. report was also received showing that the contraband articles received by them were ganja, charas and bhang and therefore the prohibited articles within the meaning of the provisions of the NDPS Act.

However, as can be seen from the evidence of PW-3 Constable Kasbe, the carrier, that the forwarding letter which was produced before the Court was not the office copy of the original and therefore the learned

trial Judge came to the conclusion that the prosecution had failed to place the office copy of the original of the forwarding letter dated 5-4-1986 and therefore it was held that it cannot be said that the very sample of the property which was found in possession of the accused was sent to the C.A. so as to establish the fact that the article which was seized from the accused was one and the same which was sent for chemical analysis regarding which the positive report was received. In our view, it must be noted that this aspect of the evidence is vital in the sense that the forwarding letter always bears the stamp of the wax seal on the letter as well as the office copy thereof so as to enable the C.A. to compare the same seal on the forwarding letter with the seal on the article which is sent in sealed condition. In other words, if such seal is not available to the C.A. for comparison by way of forwarding letter, then it cannot be said that the articles sent to the C.A. were the same which were seized from the accused person at the relevant time. In view of this position, this lacuna becomes fatal to the prosecution case and therefore no fault can be found with the reasonings adopted and the findings recorded by the learned trial Judge while acquitting the accused.

5. For the reasons recorded above, we hold that the appeal is devoid of any merit and therefore must fail

and stands dismissed.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)